08-1306

~~No. 08-0101~~ 2

Supreme Court, U.S.
FILED
JUN 25 2009
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

DEBORAH K. HENDRIX; ANGIE REVELL;
PHILIP HENDRIX, III; PHYLLIS ATTOCKNIE,
Petitioners,

v.

WALLACE COFFEY, RONALD REDELK, EDDIE MAHSEET, LANNY ASEPERMY, JANICE BIGBEE, individually, as citizens of the United States and State of Oklahoma, and as members of the Comanche Business Committee; DONNA WAHNEE, individually, Tribal Enrollment Director, as a citizen of the United States and State of Oklahoma, and as a member of the Comanche Business Committee; KIRKE KICKINGBIRD; HOBBS, STRAUS, DEAN & WALKER, LLP
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether Petitioners have presented compelling reasons to grant the Petition, where the Tenth Circuit's Opinion affirming the district court's order dismissing their action for lack of subject-matter jurisdiction does not conflict with a decision of this Court or a Court of Appeals, and does not or fails to implicate an important federal question that has not been settled by this Court.

2. Whether Federal Courts lack subject-matter jurisdiction over a dispute involving membership in an Indian tribe.

3. Whether an Indian tribe's sovereign immunity from suit has been abrogated by the Indian Civil Rights Act for membership determinations.

4. Whether an Indian tribe's sovereign immunity from suit has been abrogated by other federal law for membership determinations.

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list represents all the parties appearing here and before the United States Court of Appeals for the Tenth Circuit:

Petitioners here and Appellants below:

DEBORAH K. HENDRIX; ANGIE REVELL; PHILIP HENDRIX, III; PHYLLIS ATTOCKNIE,

Respondents here and Appellees below:

WALLACE COFFEY, RONALD REDELK, EDDIE MAHSEET, LANNY ASEPERMY, JANICE BIGBEE, individually, as citizens of the United States and State of Oklahoma, and as members of the Comanche Business Committee; DONNA WAHNEE, individually, Tribal Enrollment Director, as a citizen of the United States and State of Oklahoma, and as a member of the Comanche Business Committee; KIRKE KICKINGBIRD; HOBBS, STRAUS, DEAN & WALKER, LLP

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IN THE

Supreme Court of the United States

No. 08-6161

DEBORAH K. HENDRIX; ANGIE REVELL; PHILIP HENDRIX, III; PHYLLIS ATTOCKNIE,
Petitioners,

v.

WALLACE COFFEY, RONALD REDELK, EDDIE MAHSEET, LANNY ASEPERMY, JANICE BIGBEE, individually, as citizens of the United States and State of Oklahoma, and as members of the Comanche Business Committee; DONNA WAHNEE, individually, Tribal Enrollment Director, as a citizen of the United States and State of Oklahoma, and as a member of the Comanche Business Committee; KIRKE KICKINGBIRD; HOBBS, STRAUS, DEAN & WALKER, LLP
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF IN OPPOSITION

INTRODUCTION

Petitioners have presented no "compelling reasons" for their Petition for Writ of Certiorari to be granted as required by this Court. Sup. Ct. R. 10. The "character of the reasons" for which the Court will

grant review include a conflict between circuits concerning an important matter, a departure from the accepted and usual course of judicial proceedings so significant that the Court's supervisory powers should be involved, a decision on an important question of federal law that has not (but should be) settled by this Court, or a decision on an important federal question which conflicts with the relevant decisions of this Court. *Id.* at (a), (b), and (c). The Petitioners have utterly failed to establish any one of these criteria. A petition for writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law. *Id.* The petition should be denied.

STATEMENT OF THE CASE

Petitioners, filed this suit pro se in the district court on June 11, 2008. They filed an amended Complaint pro se on June 23, 2008.[1] The amended complaint centers around official governmental actions by the Comanche Business Committee (hereinafter "Business Committee") that resulted in the disenrollment of three of Petitioners; Deborah Hendrix, Angie Revell, and Phillip Hendrix III. The fourth Petitioner (Phyllis Attocknie), a member of the Comanche Nation, appears to seek relief related to, and in sympathy with, the claim of the other three Petitioners, although, no adverse action has been taken, nor alleged, regarding her tribal membership.

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[1] Petitioners added the Comanche Nation's legal counsel, Kirke Kickingbird and Hobbs, Straus, Dean & Walker, LLP, to the caption of their amended complaint, but the amended complaint contained no allegations with regard to Kickingbird and Hobbs Straus, and accordingly failed to state a claim even under the relaxed standards of Fed. R. Civ. P. 8.

In the amended complaint, which was accompanied by a motion for temporary restraining order, Petitioners asked the district court to construe the Comanche Nation Constitution and other Comanche law, overturn the findings of fact of a tribal forum, and declare that Hendrix, Revell, and Hendrix III were lawful members of the Comanche Nation entitled to material and monetary tribal benefits. They also requested the district court to issue a temporary injunction to prevent recognition of the outcome of a tribal election, based on allegations that Petitioner Hendrix was not permitted to participate in the election process.

Respondents filed a response to the motion for temporary restraining order and a motion to dismiss for lack of jurisdiction, and Petitioners filed their response. On July 10, 2008, after consideration of the parties' briefs, the district court granted the motion to dismiss finding it lacked subject-matter jurisdiction over the matter. This ruling was based on the district court's determination that Petitioners' due process and equal protection claims concerning tribal membership eligibility and election participation involve an internal tribal dispute that is not subject to federal court review, and the court's further determination that the Indian Civil Rights Act ("ICRA") does not establish subject-matter jurisdiction over such disputes. The district court, apparently finding it unnecessary, never reached the Respondents' further arguments concerning sovereign immunity and failure to state a claim for which relief could be granted under Fed. R. Civ. P. 12(b)(6).

The Petitioners filed a notice of appeal with the United States Court of Appeals for the Tenth Circuit on August 1, 2008. The Tenth Circuit found, after

carefully reviewing the "Districts Courts order in light of the parties arguments, the record on appeal, and the governing law", that as observed by the district court, "this is a dispute over tribal membership, which is an internal tribal concern." The Tenth Circuit further concurred with the district court that the "ICRA does not create a federal cause of action either in its own right or in conjunction with other federal law," and that Petitioners', "due process and equal protection claims concerning tribal membership eligibility, election-participation, and petitioning privileges fail because there is no federal forum created by the ICRA." (Order and Judgment 2) The Tenth Circuit affirmed the judgment of the district court.

Petitioners' motion for en banc review was denied because Petitioners failed to comply with the requirements of Fed. R. App. P. 35(b).

JURISDICTION

The Petition for Writ of Certiorari was filed on March 11, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

REASONS FOR DENYING REVIEW

The decisions below do not conflict with a decision of this Court or any Court of Appeals, nor do they implicate a federal question that has not been decided by this Court. On the contrary, the decisions below follow this Court's precedent as announced in *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978), which has been settled law on the issues herein. Furthermore, all federal circuits having addressed the same issues concerning the absence of federal court jurisdiction over tribal membership disputes

are consistent with the decisions below. There are no compelling reasons for this Court to overrule its precedent. Accordingly, Petitioners have not carried their burden to demonstrate "compelling reasons" for the Petition to be granted by the Court under Rule 10.

I. This Court's Precedent and Federal Circuits Decisions Agree There Is No Subject-Matter Jurisdiction Over a Dispute Involving Membership in an Indian Tribe.

The lower courts correctly determined that this case centers around tribal membership, which is a matter outside the purview of the federal courts. Contrary to Petitioners' assertion that federal courts have jurisdiction over a matter involving membership in the Comanche Nation, tribal membership is an internal tribal matter that is not subject to federal court jurisdiction. Fundamental federal law recognizes that Indian tribes have the right to make their own rules and be governed by them. *Williams v. Lee*, 358 U.S. 217, 220 (1959). This includes the right to determine membership in the tribe. A "tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72, n.32 (1978); *see also United States v. Wheeler*, 435 U.S. 313, 323, n. 18 (1978); *Montana v. United States*, 450 U.S. 544, 564 (1981). The circuits that have addressed the issue of federal jurisdiction in tribal membership matters are in accord with *Santa Clara Pueblo* and with each other.

Before the *Santa Clara Pueblo* decision, in *Martinez v. S. Ute Tribe*, 249 F.2d 915, 920–21 (10th Cir.

1957) the Tenth Circuit expressly found that it lacked federal-question jurisdiction in a case involving tribal membership. The Tenth Circuit explained that courts "have consistently recognized that in absence of express legislation by Congress to the contrary, a tribe has the complete authority to determine all questions of its own membership, as a political entity." *Id.*; *see also Fletcher v. United States*, 116 F.3d 1315, 1326–27 (10th Cir. 1997) ("Indian tribes are separate sovereigns with the power to regulate their internal and social relations, including their form of government and tribal membership.")

Similarly, the Ninth Circuit has also found, prior to *Santa Clara Pueblo*, that a dispute involving membership in a tribe does not present a federal question. *Fondahn v. Native Village of Tyonek*, 450 F.2d 520, 522 (9th Cir. 1971). In addition, the Ninth Circuit recently affirmed a district court's dismissal of a case brought against officials of the United States Department of the Interior, Bureau of Indian Affairs, citing to *Santa Clara Pueblo* for the proposition that tribal membership is exclusively within the province of the tribe and the federal government had no place in the scheme. *See Williams v. Gover*, 490 F.3d 785, 791 (9th Cir. 2007) (finding that the Bureau could not have violated Fifth Amendment rights of Indians desiring tribal membership because the Bureau could not have defined tribal membership even if it wanted to).

In the Second Circuit, in *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874 (2nd Cir. 2006), members of the Tonawanda Band filed a habeas corpus claim in response to their punishment of banishment and loss of membership for treason. The Second Circuit affirmed the principles of *Santa Clara*

Pueblo as related to tribal-membership determinations. Because the claim of banishment as a punishment for treason implicated the habeas-corpus provision of the ICRA (25 U.S.C. § 1303), which expressly creates a federal cause of action, the court remanded to the district court for further proceedings.[2]

Similarly, the Eighth Circuit agreed with a tribal court ruling that the "great weight of authority holds that tribes have exclusive authority to determine membership issues" and "there is perhaps no greater intrusion upon tribal sovereignty than for a federal court to interfere with a sovereign tribe's membership determinations." *Smith v. Babbitt*, 100 F.3d 556, 559 (8th Cir. 1996). In affirming dismissal of a claim regarding the distribution of the tribal gaming revenues, the court, citing *Santa Clara Pueblo*, found it lacked jurisdiction over what was essentially a dispute over tribal-membership determinations.

Finally, the Fifth Circuit has also concluded that tribes "have the right to control their membership roster, and any federal litigation on that subject would disrupt the conduct of intratribal affairs, an area that the federal government has left to the tribe itself." *Apodaca v. Silvas*, 19 F.3d 1015, 1016 (5th Cir. 1994) citing *Santa Clara Pueblo* at 436 U.S. 59–60. Counsel for Respondents have found no case to the contrary in any other circuit. Accordingly, there is no "split" among the circuits on the issue raised in this matter.

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[2] Petitioners have not alleged that they have suffered the punishment of banishment. Nor do Petitioners assert that the termination of their Comanche Nation membership has affected their liberty interests in traveling freely in and around the Comanche Nation.

II. The Holding in *Santa Clara Pueblo* Is Controlling in this Matter and Deserves Stare Decisis Deference.

While the arguments are difficult to discern, Petitioners appear to argue that the status of the Comanche Nation is somehow different from that of other tribes affected by the *Santa Clara Pueblo* case (Appellant Br. p. 5). This argument appears solely based on Petitioners' general misunderstanding of federal laws affecting Indian tribes. Petitioners offer two theories for this argument.

Petitioners' first theory concerning the asserted inapplicability of the *Santa Clara Pueblo* case is based on the Act of March 3, 1871, 16 Stat. 544, 566, codified at 25 U.S.C. § 71, which ended the treaty-making period for all Indian tribes. Petitioners also challenge the applicability of *Santa Clara Pueblo* on the subsequent allotment acts related to Comanche lands and a Supreme Court decision in *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903) (construing the plenary authority of Congress over Indian affairs). Petitioners suggest that these laws and the Court decision replaced tribal authority with complete federal authority over Comanche lands and affairs (Appellant Br. pp. 5–9). Contrary to this theory, there is nothing in the 1871 Act, which applied to all tribes, that singles out the Nation or officials for special treatment apart from other tribes. Furthermore, while the 1871 Act changed the terminology used for documentation of government-to-government agreements between the federal government and Indian tribes, the basic federal/tribal relationship remained unchanged, and the federal government continued to negotiate agreements with tribes, including the Comanche Nation, which were

then enacted into law by Congress. *See Cohen's Handbook of Federal Indian Law* (Nell Jessup Newton *et al.* eds. 2005 ed.) 395, § 5.01[2] ("*Cohen's*"). There is likewise nothing in the Comanche Nation's allotment legislation or the *Lone Wolf* decision setting the governmental status of the Comanche Nation apart from other tribes or replacing the authority of the Comanche Nation over membership determinations with that of the federal government.

The Comanche Nation is a federally recognized Indian tribe, with the same status as other federally recognized Indian tribes, including the Santa Clara Pueblo. Petitioners have attempted to distinguish the Comanche Nation's status from that of other tribes by stating, incorrectly, that federal allotment legislation caused the Comanche Nation to have "no jurisdiction whatsoever" over Comanche trust allotments. (Appellant Br. at 9). While it is difficult to make a connection between that grave misstatement and the issue of federal subject-matter jurisdiction in the present case, Respondents nonetheless find it necessary to correct it.

As the Court determined nearly twenty years ago, lands held in trust for an Indian tribe in Oklahoma are Indian country over which tribes exercise jurisdiction, regardless of whether those lands constitute a "formal" reservation. *See Okla. Tax Comm'n v. Sac and Fox Nation*, 508 U.S. 114, 124–125 (1993); *Okla. Tax Comm'n v. Citizen Band of Potawatomi*, 498 U.S. 505, 511 (1991). It is well-established that a wide range of activities on Indian country lands in Oklahoma, including the Nation's Indian country lands, are subject to federal and tribal criminal and civil jurisdiction. *Id.*; *see also Mustang Prod. Co. v. Harrison*, 94 F.3d 1382 (10th Cir. 1988). Congress has also

made it clear that tribes have governmental authority over trust lands, including trust allotments held for the benefit of tribal members. *See, e.g.*, 25 U.S.C. § 2703(4)(B).

Consistent with these legal precedents, federal regulations specifically include the Comanche Nation within the Court of Indian Offenses system (also known as "CFR Courts"). 25 C.F.R. §§ 11.100, 11.102. Those regulations are intended to establish "adequate machinery" for the administration of justice in areas of Indian country where tribes, including the Comanche Nation, retain adjudicatory jurisdiction. Like the federal courts, the regulations recognize the importance of tribal governmental authority by prohibiting the Court of Indian Offenses from adjudicating internal tribal government disputes, absent grant of such authority by resolution of the governing tribal body. 25 C.F.R. § 11.118(b); *see also* 73 Fed. Reg. 39,857 (July 11, 2008).

Petitioners' second theory regarding the asserted inapplicability of *Santa Clara Pueblo* to the present case is based on their claim that amendments to the Indian Self-Determination and Education Assistance Act of 1975, codified at 25 U.S.C. §§ 450 *et seq.* ("ISDEAA"), somehow affected the validity of the *Santa Clara Pueblo* decision as applied to actions of Comanche Nation governmental officials (Appellant Br. p. 14). However, they do not identify any specific provisions of the ISDEAA in support of that argument, as there are none. In fact, federal law prohibits federal government from treating the Comanche Nation differently than other tribes. *See* 25 U.S.C. § 476(f), (g).

Petitioners' attempts to distinguish the legal status of the Comanche Nation from the other tribes for

purposes of the Supreme Court's ruling in *Santa Clara Pueblo* are simply not supported by governing law. The *Santa Clara Pueblo* ruling that the federal courts have no subject-matter jurisdiction over disputes involving tribal membership is controlling in this case.

Stare decisis requires compelling reasons for overruling existing precedent. *See, e.g., Dickerson v. United States*, 530 U.S. 428, 443 (2000); *United States v. IBM*, 517 U.S. 843, 856 (1996). This Court's ruling in *Santa Clara Pueblo* has been settled law for over thirty (30) years, and deserves particularly strong stare decisis deference. *See, e.g., Sheppard v. United States*, 544 U.S. 13, 23 (2005); *Hilton v. South Carolina Pub. Rys. Comm'n*, 502 U.S. 197, 205 (1991). "The rule of law demands that adhering to . . . prior case law be the norm. Departure from precedent is exceptional, and requires special justification." *Randall v. Sorrell*, 548 U.S. 230, 244 (2006). Petitioner has not suggested any good rationale for discarding *Santa Clara Pueblo*. The application of stare decisis is especially compelling where, as here, Congress has not acted to reject this Court's interpretation and the principle has become settled through reiteration over a long period of time.

III. The Indian Civil Rights Act Does Not Establish Federal Subject-Matter Jurisdiction in a Suit Concerning Governmental Actions by Tribal Officials.

The lower Courts correctly determined that the Indian Civil Rights Act ("ICRA"), 25 U.S.C. §§ 1301, *et seq.*, does not establish federal subject-matter jurisdiction over challenges to governmental actions involving membership. Contrary to Petitioners'

argument on appeal, 25 U.S.C. § 1302(8), which provides that tribes shall not deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law, does not create a federal cause of action either in its own right, or in conjunction with other federal law. *See Santa Clara Pueblo*, 436 U.S. at 52; *accord Ordinance 59 Ass'n v. U.S. Department of the Interior*, 163 F.3d 1150, 1155 (10th Cir. 1998). As recognized by the district court, the Court held in *Santa Clara Pueblo* that, with the exception of certain habeas corpus matters[3], the ICRA does not authorize federal civil actions against either a tribe or its officers. *Santa Clara Pueblo*, 436 U.S. at 59, 72. The Supreme Court observed in *Santa Clara Pueblo* that "the structure of the statutory scheme and the legislative history of [25 U.S.C. § 1302] suggest that Congress' failure to provide remedies other than habeas corpus was a deliberate one." *Id.* at 61. The Court also noted that establishment of a federal cause of action for the enforcement of rights under the ICRA "plainly would be at odds with the congres-

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[3] The ICRA's only private right of action in federal court arises when an Indian is detained in violation of his rights and seeks a writ of habeas corpus under 25 U.S.C. § 1303. However, the ICRA habeas corpus provision was not intended to provide broader rights to Indians detained by tribes than the rights of non-Indians detained by states or the federal government. "[O]ne seeking to invoke jurisdiction of a federal court under § 1303 must demonstrate . . . a severe actual or potential restraint on liberty." *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 879–80 (2d Cir. 1996), *cert. denied*, 519 U.S. 1041 (1996). In the present case, Petitioners' did not raise issues concerning habeas corpus on appeal, and would not have been successful in doing so, because they failed to allege or demonstrate any "restraint on liberty" as a result of the actions of Respondents.

sional goal of protecting tribal self-government." *Id.* at 64. This Court's precedent in *Santa Clara Pueblo*, and followed by the Lower Courts, that the ICRA does not establish subject-matter jurisdiction in federal courts has been settled law for over 30 years.

Petitioners state that the Comanche Nation has no tribal court and that the CFR Court has no jurisdiction over civil-rights issues, and conclude that their only remedy is in federal court. (Appellant Br. pp. 17, 25; Pet'r Pet. pp. 9, 14). This reasoning is unsound for several reasons. Petitioners overlook the fact that federal courts do not acquire jurisdiction by default, and that persons seeking to enforce the ICRA can do so only in tribal court or other internal tribal forums. *See Santa Clara Pueblo*, 436 U.S. at 65.[4] Petitioners also ignore the fact that they were provided an opportunity for a hearing before a tribal forum (Appellee Supp. Application pp. 38, 39). Federal courts recognize non-judicial tribal forums or institutions as competent law-applying bodies. *See Ordinance 59 Ass'n*, 163 F.3d at 1155. The existence and utilization of a tribal forum not preferred by Petitioners does not create federal court jurisdiction.

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[4] A federal court has been determined to have jurisdiction to hear a suit against an Indian tribe under 25 U.S.C. § 1302 based on the absence of a tribal forum on one occasion. *See Dry Creek Lodge, Inc. v. Arapaho and Shoshone Tribes*, 623 F.2d 682 (10th Cir. 1980), cert. denied, 449 U.S. 1118 (1981). The *Dry Creek* case concerned a dispute with a non-Indian, and did not involve internal tribal affairs. Furthermore, the *Dry Creek* rule has "minimal precedential value", and the Tenth Circuit has never held it to be applicable other than in the *Dry Creek* decision itself. *Miner Elec., Inc. v. Muscogee (Creek) Nation*, 505 F.3d 1007 (10th Cir. 2007).

IV. There Are No Other Federal Laws That Establish Subject-Matter Jurisdiction in a Suit Concerning Governmental Actions by Tribal Officials.

In order for a federal court to have federal-question jurisdiction "[a] right or immunity created by the laws of the United States must be an essential element of the plaintiff's cause of action." *Martinez v. Southern Ute Tribe*, 273 F.2d 731, 734 (10th Cir. 1960) (internal citations and notes omitted), *cert. denied*, 363 U.S. 847 (1960) (no federal-question jurisdiction even where Congress authorized distribution of funds to tribal members and the Secretary, under another statute, had included plaintiff in a roll of tribal membership). The mere statement that a construction of certain federal statutes is involved in a case is not sufficient to bestow federal-question jurisdiction, and Indians have no greater rights to sue in federal court than any other litigants. *Id.* at 734.

Petitioners have argued below that they have vested rights regarding Indian allotments subject to the due-process clause of the Fifth Amendment of the United States Constitution (Appellant Br. pp. 16, 21–22). They fail to explain how loss of lands could result from revocation of tribal membership, because there is simply no legal support for this argument as the lower courts recognized. Petitioners also theorize that federal employee "census recordings" for Comanche allotment purposes cause tribal membership to be "strictly federal in nature" and protected by the Fifth Amendment of the United States Constitution (Appellant Br. pp. 15, 20). Contrary to such assertions, it is the Comanche Nation Constitution, not the U.S. Constitution or federal laws, which contains requirements for tribal citizenship, expressly recog-

nizes the duty and authority of the Business Committee to maintain the tribal membership roll, and does not require or authorize any federal involvement in tribal membership matters (Comanche Nation Const. art. III). Thus, tribal membership actions are not federal actions implicated by the due-process clause.

The Fifth Amendment, the Fourteenth Amendment, and general civil rights laws govern federal and state action, not action by tribal governmental officials. In order to establish a claim under the Civil Rights Act of 1871, (codified at 42 U.S.C. § 1983), a plaintiff must show that the defendant deprived him of a constitutional right "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory." *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 150 (1970). "[I]t has been understood for more than a century that the Bill of Rights and the Fourteenth Amendment do not of their own force apply to Indian tribes." *Nevada v. Hicks*, 533 U.S. 353, 383 (2001); (citing, *Talton v. Mayes*, 163 U.S. 376, 382–85 (1896)) (addressing non-applicability of the Fifth Amendment to Indian Tribes). Likewise, although the rights protected under the Civil Rights Act of 1870, (codified at 42 U.S.C. §§ 1985, 1986) extend to private actions, the protected rights are the constitutionally guaranteed civil rights under the U.S. Constitution which do not extend to tribes. *See United Broth. of Carpenters and Joiners of America, Local 610, AFL-CIO v. Scott*, 463 U.S. 825, 829–35 (1983), (citing *Griffin v. Breckenridge*, 403 U.S. 88 (1971)) The matter here centers around qualifications for membership under, and membership rights conferred by, the Comanche Nation Constitution. Moreover, in cases brought under 42 U.S.C. §§ 1985, 1986, the cause of action must be based in some sort of racial animus, *id.*, a factor not alleged or present in this

case. As the Court has recognized, membership in a federally recognized Indian tribe is a political—not a racial—classification. *Morton v. Mancari*, 417 U.S. 535, 551–55 (1974). It is also clear that tribal-membership issues do not trigger invidious class-based discrimination. *See Shortbull v. Looking Elk*, 677 F.2d 645 (1982) (excluding nonmembers from the right to run and vote in tribal election not actionable under 42 U.S.C. § 1985(c)). Accordingly, federal court jurisdiction is not implicated under the Bill of Rights or any of the Civil Rights Acts.

Petitioners also argue that the Citizenship Act of June 2, 1924, 8 U.S.C. § 1401(B), confers federal-court jurisdiction over the present case, with little or no explanation regarding such assertions (Appellant Br. p. 6; Pet'r Pet. pp. 4, 10, 13). The 1924 Citizenship Act established citizenship for Indians who had not already been granted citizenship through other specific laws. Apparently, Petitioners' argument is based on a provision in the Citizenship Act that the granting of citizenship "shall not in any manner impair or otherwise affect the right of such person to tribal or other property." However, this provision was not intended to trigger federal constitutional protections. Instead, it was intended to lessen the controversy among Indians by separating United States citizenship from questions of tribal citizenship and cultural assimilation, following a period in which United States citizenship for Indians had been "conditioned on the severing of tribal ties, renouncing tribal citizenship, and the removal of federal protection." *Cohen's* at 900, § 14.01[3]. "Even though Congress enacted legislation in 1924 making persons born to a member of an Indian tribe nationals and citizens of the Unites States (8 U.S.C. § 1401), that Act did not destroy the existence or sovereignty of the Indian tri-

bes or their jurisdiction over their members." *Tom v. Sutton*, 533 F.2d 1101, 1103 n.1 (9th Cir. 1976); *see also Indian Country, U.S.A., Inc. v. State of Okla. ex. rel. Oklahoma Tax Com.*, 829 F.2d at 980 n.6 (noting that the theory that once the Indians in Oklahoma received United States and state citizenship, the federal government lost its authority to treat them or their lands differently has been rejected by both federal and state courts). Thus, the Citizenship Act neither enlarged federal jurisdiction, nor diminished tribal sovereignty or jurisdiction as related to tribal citizenship or qualification for membership in the Comanche Nation.

CONCLUSION

The Tenth Circuit correctly affirmed the district court dismissal of this action for lack of subject-matter jurisdiction, because the U.S. Constitution, including the Bill of Rights, and the Civil Rights Acts and the Citizenship Act cited by Petitioners do not apply to internal relations of Indian tribes, including the Comanche Nation, and there is no racial or invidious class-based discrimination. There is no split among the circuits as to the proper application of this Court's controlling precedent in *Santa Clara Pueblo*. The principle of stare decisis compels denial of this Petition to avoid disruption of well-settled legal expectations.

Petitioners have not established any compelling reasons to grant the Petition. Therefore, the Writ of Certiorari should be DENIED.

Respectfully submitted,

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